

**AMENDED PROGRAMMATIC AGREEMENT
AMONG
THE FEDERAL HIGHWAY ADMINISTRATION
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
AND THE MONTANA STATE HISTORIC PRESERVATION OFFICER
REGARDING THE TREATMENT OF HISTORIC IRRIGATION DITCHES
AFFECTED BY HIGHWAY CONSTRUCTION IN MONTANA**

WHEREAS, the Federal Highway Administration, Montana Division and Western Federal Lands Highway Division (FHWA), propose to make Federal Aid funding available to the Montana Department of Transportation (MDT) for that agency's ongoing program to construct or rehabilitate highways and to make Federal funding available for the Public Lands Highway Program in the state of Montana, and

WHEREAS, the FHWA has determined that this federally-assisted program may have an effect upon a certain class of properties included in or eligible for inclusion in the National Register of Historic Places and has consulted with the Advisory Council on Historic Preservation (Council) and the Montana State Historic Preservation Officer (SHPO) pursuant to Section 800.13 of the regulations (36 CFR Part 800) implementing Section 106 of the National Historic Preservation Act (16 USC 470f); and

WHEREAS, the Montana Department of Transportation (MDT) participated in the consultation and has been invited to concur in this Programmatic Agreement;

NOW THEREFORE, the FHWA, the Council, and the Montana SHPO agree that the program addressed in this Programmatic Agreement shall be administered in accordance with the following stipulations to satisfy the FHWA's Section 106 responsibility for all individual undertakings of the program.

Stipulations

The FHWA will ensure that the following measures are carried out:

General Notes:

- A) The term "Irrigation Ditches" applies to irrigation ditches and ancillary structures such as, but not limited to, concrete ditch linings, intake headgates, overflow structures, flumes and siphons.
- B) The procedures in this Programmatic Agreement will be followed without regard to the ownership or length of the irrigation ditches addressed in this Agreement.
 - 1) MDT will assist the FHWA in meeting the compliance requirements of 36 CFR Section 800.4 through 800.6, as applicable, for those highway construction projects affecting irrigation ditch-related structures that are 50 years or older. For the purpose of this Programmatic Agreement, structures associated with existing roads and built as part of the roadway, such as metal or concrete culverts, will be considered to be features of the roadway and not of an intersecting irrigation system.
 - 2) MDT will assist the FHWA in meeting the compliance requirements of 36 CFR Section 800.4 through 800.6, as applicable, when the affected irrigation ditch has been abandoned, i.e., is no longer operational and operated. In such circumstances, the requirements of Section 106, as implemented by 36 CFR Part 800, will be met whether or not ditch-related structures will be impacted.
 - 3) MDT will assist the FHWA in meeting the compliance requirements of Section 106 of the Act, as implemented by 36 CFR Part 800, for those projects affecting irrigation ditches and associated structures, if any, previously listed on or determined eligible for inclusion in the National Register of Historic Places.

- 4) When operational irrigation ditches without structures in the construction-impact area will be re-channeled during highway construction, MDT will comply with the following procedures:
 - a) Simplified inventory forms employing a format approved by the SHPO will be used to describe the feature. The forms will provide an assigned Smithsonian site number, the ditch's name, legal description, a history and map of the ditch taken from the appropriate Montana Water Resources Survey publication or other readily available published source and MDT's assigned project name and number.
 - b) Such ditches will not be evaluated against the criteria of the National Register of Historic Places.
 - c) It is understood that determinations of effect, alternative project designs to avoid impact or mitigation of effect (other than continued ditch operation) will not be done by MDT or FHWA.
 - d) Irrigation ditches not identified by name in appropriate Montana Water Resources Survey publication will not be considered under any circumstances.
- 5) The Council and the SHPO may monitor activities carried out pursuant to this Programmatic Agreement, and the Council will review such activities if so requested by a signatory to this Agreement or by a member of the public. FHWA will cooperate with the Council and the SHPO in carrying out their monitoring and review responsibilities.
- 6) Any party to this Programmatic Agreement may request that it be amended, whereupon the parties will consult in accordance with 36 CFR Part 800.13 to consider such amendment.
- 7) Any part to this programmatic Agreement may terminate it by providing, in writing, forty-five (45) days notice to the other parties, provided that the parties will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, FHWA will comply with 36 CFR Part 800.4 through 800.6 with regard to individual undertakings covered by this programmatic Agreement.
- 8) If a dispute arises regarding implementation of this Programmatic Agreement, FHWA will consult with the objecting party to resolve the dispute. If any consulting party determines that the dispute cannot be resolved, FHWA will request the further comments of the Council pursuant to 36 CFR Part 800.6(b). Any council comment provided in response to such a request will be taken into account by the FHWA in accordance with 36 CFR Sections 800.4 through 800.6 with regard to individual undertakings covered by this Programmatic Agreement.

Execution and implementation of this Programmatic Agreement evidences that the FHWA has satisfied its Section 106 responsibilities for all individual undertakings of the program.

This amended programmatic Agreement encompasses the entire agreement between the parties and replaces any agreements previously negotiated regarding this undertaking.

WESTERN FEDERAL LANDS HIGHWAY DIVISION, FEDERAL HIGHWAY ADMINISTRATION

By: James N Hall Date: 7/20/93
MONTANA DIVISION, FEDERAL HIGHWAY ADMINISTRATION

By: DC Lewis Date: 7/23/93
MONTANA STATE HISTORIC PRESERVATION OFFICER

By: Marcella Sherfy
ADVISORY COUNCIL ON HISTORIC PRESERVATION

Date: 7/29/93

By: Robert D. Bush

Date: 8/16/93

CONCUR

MONTANA DEPARTMENT OF TRANSPORTATION

By: Edrie Vinson

Date: 7/29/93

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